

1 Christine K. Noma, Bar No. 104751
2 **WENDEL, ROSEN, BLACK & DEAN LLP**
3 1111 Broadway, 24th Floor
4 Oakland, California 94607-4036
5 Telephone: (510) 834-6600
6 Fax: (510) 834-1928
7 Email: cnoma@wendel.com

8 Attorneys for Defendants
9 Michael R. Neely, Perry J. Neely and Gary Neely
10
11
12
13
14

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17
18
19
20
21
22
23
24
25
26
27
28

PALMTREE ACQUISITION
CORPORATION, a Delaware corporation,

Plaintiff,

vs.

MICHAEL R. NEELY, an individual,
PERRY J. NEELY, an individual; GARY
NEELY, an individual; MICHAEL R.
NEELY, PERRY J. NEELY and GARY
NEELY dba MIKE'S ONE HOUR
CLEANERS; CHARLES FREDERICK
HARTZ dba PAUL'S SPARKLE
CLEANERS; CHARLES F. HARTZ, an
individual; MULTIMATIC
CORPORATION, a New Jersey
corporation; WESTERN STATES
DESIGN, a California corporation;
MCCORDUCK PROPERTIES
LIVERMORE, LLC, a Delaware limited
liability company individually and as the
successor to JOHN MCCORMICK,
KATHLEEN MCCORDUCK, PAMELA
MCCORDUCK, SANDRA
MCCORDUCK MARONA, and IMA
FINANCIAL CORPORATION, a
California corporation; STARK
INVESTMENT COMPANY, a California
general partnership; GRUBB & ELLIS
REALTY INCOME TRUST,

Case No. CV 08 3168 EMC

**STIPULATION AND [PROPOSED]
ORDER RE CONTINUANCE OF
MEDIATION AND CONTINUANCE OF
INITIAL CASE MANAGEMENT
CONFERENCE**

(Currently Scheduled CMC: 3/18/09)

1 LIQUIDATING TRUST, a California trust;
 2 and DOES 1-20, inclusive,

3 Defendants.

5 **RECITALS**

6 A. Plaintiff Palmtree Acquisition Corporation filed this action ("Action") as a "re-
 7 opener" of a prior action that was conditionally settled, which prior action was filed on February
 8 3, 1993 in the United States District Court for the Northern District of California, entitled *Grubb*
 9 & *Ellis Realty Trust v. Catellus Development Corp., et al.*, and related cross-actions, Case No.
 10 C93-0383 SBA.

11 B. The parties to the Action stipulated and requested that the Court grant a
 12 continuance of the Initial Case Management Conference to allow the parties to engage in
 13 mediation. The Court issued its order approving the stipulation and granting the continuance on
 14 September 15, 2008. ("Stipulation")

15 C. Pursuant to the Stipulation, the mediation was to occur by February 2, 2009, and
 16 the Initial Case Management Conference was continued to March 18, 2009.

17 D. However, while the parties to the Action have jointly retained an environmental
 18 consultant to respond to the California Regional Water Quality Control Board ("RWQCB")
 19 directives to investigate the extent and source of the environmental contamination, the completion
 20 of the work has been delayed, due in part to technical difficulties in obtaining access to test the
 21 public municipal supply wells. The joint environmental consultant has requested that the
 22 RWQCB approve an extension until April 30, 2009 to complete the "field work" and a further
 23 delay to complete the technical analysis (site conceptual groundwater flow modeling) and to
 24 submit a draft environmental report. It is now estimated that the draft environmental report will
 25 be completed in June, 2009. Approval by the RWQCB, while anticipated, is currently pending.

26 E. The parties to the Action have held period meetings and regular conference calls to
 27 discuss the status of the environmental response. At our February 2, 2009, conference call, the
 28 parties agreed that mediation should be scheduled after the environmental report has been

1 completed, and that the mediation should be scheduled no later than September 1, 2009.

2 F. The parties also discussed naming additional defendants and/or cross
 3 defendants/third party defendants to the Action.

4 Therefore, in the interest of judicial economy, pursuant to Local Rule 6-1(b) and 7-12, the
 5 parties below hereby agree and stipulate, and requests that the Court modify the previous
 6 Stipulation as follows:

7 **STIPULATION**

8 1. The parties to this Action agree to commence settlement discussions with a private
 9 mediator, to be scheduled no later than September 1, 2009 ("Mediation"). The Mediation may
 10 cover multiple days and may be continued from time to time and will be deemed to have
 11 concluded at such time as: (a) a settlement is reached, or (b) the mediator issues a letter
 12 concluding that a settlement has not been reached and the Mediation is concluded.

13 2. In order to allow the parties to proceed with Mediation, the parties to the Action
 14 request that the Court continue the Initial Case Management Conference now scheduled for
 15 March 18, 2009, to September 16, 2009; the parties shall submit a joint case management
 16 conference statement advising the Court as to the status of the Mediation no later than September
 17 9, 2009.

18 3. The parties further agree that in all other respects the Stipulation approved by the
 19 Court on September 15, 2008, remains in effect.

20 Wherefore, the Parties respectfully request that the Court approve this Stipulation.

21
 22 DATED: 2/2/2009 Cox, Castle & Nicholson LLP
 23

24 By: Peter M. Morrisette
 25 Stuart I. Block
 26 Peter M. Morrisette
 27 Attorneys for Palmtree Acquisition
 28 Corporation f/k/a Catellus Development

1 DATED: 2/2/09

Wendel, Rosen, Black & Dean LLP



2 By:

3 Christine K. Noma
4 Attorneys for Michael R. Neely, Perry J. Neely, and
5 Gary Neely, dba Mike's One Hour Cleaners

6
7 DATED: _____

Rogers Joseph O'Donnell

8 By:

9 Robert C. Goodman, Esq.
10 Attorneys for Charles Frederick Hartz, dba Paul's
11 Sparkle Cleaners

12 DATED: _____

Dongell Lawrence Finney, LLP

13 By:

14 Thomas F. Vandenburg, Esq.
15 Attorneys for Multimatic Corporation

16 DATED: _____

Foley McIntosh Frey & Claytor

17 By:

18 Kenneth W. Pritikin, Esq.
19 Attorneys for Western State Design

20 DATED: _____

Gordon, Watrous, Ryan, Langley, Bruno &
21 Paltenghi

22 By:

23 Bruce C. Paltenghi, Esq.
24 Attorneys for McCorduck Properties Livermore,
25 LLC

1 DATED: _____

Wendel, Rosen, Black & Dean LLP

2

3

4 By: _____
5 Christine K. Noma
6 Attorneys for Michael R. Neely, Perry J. Neely, and
7 Gary Neely, dba Mike's One Hour Cleaners

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

DATED: 2/2/09

Rogers Joseph O'Donnell

By: _____

Robert C. Goodman, Esq.
Attorneys for Charles Frederick Hartz, dba Paul's
Sparkle Cleaners

DATED: _____

Dongell Lawrence Finney, LLP

By: _____

Thomas F. Vandenburg, Esq.
Attorneys for Multimatic Corporation

DATED: _____

Foley McIntosh Frey & Claytor

By: _____

Kenneth W. Pritikin, Esq.
Attorneys for Western State Design

DATED: _____

Gordon, Watrous, Ryan, Langley, Bruno &
Paltenghi

By: _____

Bruce C. Paltenghi, Esq.
Attorneys for McCorduck Properties Livermore,
LLC

Wendel, Rosen, Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, CA 94607-4036

1 DATED: _____ Wendel, Rosen, Black & Dean LLP
2
3 By: _____
4 Christine K. Noma
5 Attorneys for Michael R. Neely, Perry J. Neely, and
6 Gary Neely, dba Mike's One Hour Cleaners
7
8 DATED: _____ Rogers Joseph O'Donnell
9
10 By: _____
11 Robert C. Goodman, Esq.
12 Attorneys for Charles Frederick Hartz, dba Paul's
13 Sparkle Cleaners
14
15 DATED: _____ Dongell Lawrence Finney, LLP
16 By: _____
17 Thomas F. Vandenburg, Esq.
18 Attorneys for Multimatic Corporation
19
20 DATED: _____ Foley McIntosh Frey & Claytor
21
22 By: _____
23 Kenneth W. Pritikin, Esq.
24 Attorneys for Western State Design
25
26 DATED: _____ Gordon, Watrous, Ryan, Langley, Bruno &
27 Paltenghi
28
By: _____
Bruce C. Paltenghi, Esq.
Attorneys for McCorduck Properties Livermore,
LLC

1 DATED: _____

Wendel, Rosen, Black & Dean LLP

2

3

4 By: _____
5 Christine K. Noma
6 Attorneys for Michael R. Neely, Perry J. Neely, and
7 Gary Neely, dba Mike's One Hour Cleaners

8

9

10

DATED: _____

Rogers Joseph O'Donnell

11

12

By: _____

13 Robert C. Goodman, Esq.
14 Attorneys for Charles Frederick Hartz, dba Paul's
15 Sparkle Cleaners

16

17

DATED: _____

Dongell Lawrence Finney, LLP

18

19

By: _____

20 Thomas F. Vandenburg, Esq.
21 Attorneys for Multimatic Corporation

22

23

DATED: 2/2/09

Foley McIntosh Frey & Claytor

24

25

By: _____

26 Kenneth W. Pritikin, Esq.
27 Attorneys for Western State Design

28

DATED: _____

Gordon, Watrous, Ryan, Langley, Bruno &
Paltenghi

29

30

By: _____

31 Bruce C. Paltenghi, Esq.
32 Attorneys for McCorduck Properties Livermore,
33 LLC

34 006000.0001\1132916.1

35 STIPULATION AND [PROPOSED] ORDER RE CONTINUANCE OF MEDIATION AND CONTINUANCE OF INITIAL CASE MANAGEMENT CONFERENCE CASE NO. CV 08 3168 EMC

02/02/2009 14:13 9252283644

GORDON WATROUS

PAGE 02/02

1 DATED: _____

Wendel, Rosen, Black & Dean LLP

2

3

By:

Christine K. Noma
Attorneys for Michael R. Neely, Perry J. Neely, and
Gary Neely, dba Mike's One Hour Cleaners

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

DATED: _____

Rogers Joseph O'Donnell

By:

Robert C. Goodman, Esq.
Attorneys for Charles Frederick Hartz, dba Paul's
Sparkle Cleaners

DATED: _____

Dongell Lawrence Finney, LLP

By:

Thomas F. Vandenburg, Esq.
Attorneys for Multimatic Corporation

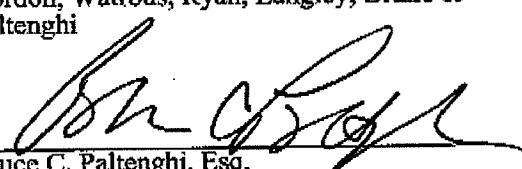
DATED: _____

Foley McIntosh Frey & Claytor

By:

Kenneth W. Pritikin, Esq.
Attorneys for Western State DesignDATED: 2-2-09Gordon, Watrous, Ryan, Langley, Bruno &
Paltenghi

By:

Bruce C. Paltenghi, Esq.
Attorneys for McCorduck Properties Livermore,
LLC

1
2 DATED: 2/3/2009

Gonsalves & Kozachenko

3
4 By: Paul Kozachenko
5 Paul Kozachenko, Esq.
6 Attorneys for Stark Investment Company

7 DATED: _____

The Costa Law Firm

8
9 By: _____
10 Daniel P. Costa, Esq.
11 Attorneys for Stark Investment Company

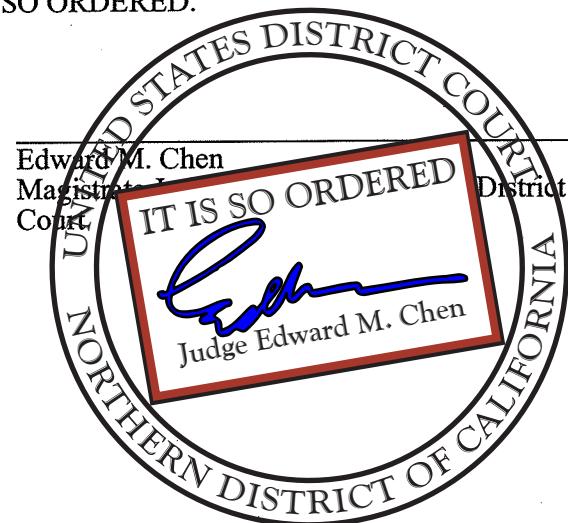
12 DATED: _____

Ellis Partners, LLC

13
14 By: (deceased – successor entity not yet ascertained)
15 Harold A. Ellis Jr., Trustee for
16 Grubb & Ellis Realty Income Trust, Liquidating
17 Trust

18
19 PURSUANT TO STIPULATION, IT IS SO ORDERED.

20 Dated: February 4, 2009



1
2 DATED: _____

Gonsalves & Kozachenko

3
4 By: _____
5 Paul Kozachenko, Esq.
6
7 Attorneys for Stark Investment Company

8 DATED: 2/2/09

9 The Costa Law Firm

10 By: _____
11 Daniel P. Costa, Esq.
12 Attorneys for Stark Investment Company

13 DATED: _____

14 Ellis Partners, LLC

15 By: (deceased – successor entity not yet ascertained)
16 Harold A. Ellis Jr., Trustee for
17 Grubb & Ellis Realty Income Trust, Liquidating
18 Trust

19
20
21
22
23
24
25
26
27
28
ORDER

29 PURSUANT TO STIPULATION, IT IS SO ORDERED.

30 Dated: _____

31 Edward M. Chen
32 Magistrate Judge of the United States District
33 Court